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Harold Singer
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South Lake Tahoe, CA 96150

Letter Code: LTBMU

Dear Harold:

Thank you for the opportunity to comment on the “Draft Memorandum of Understanding Between the Tahoe Regional Planning Agency and the Lahontan Water Board Regarding Vegetation Management Activities”.

Based on our review of the purposes (“Whereas” statements) and the clauses we believe that the draft MOU does not craft a definitive path to streamlining for the review and permitting of fuels reduction and forest health projects, but rather creates duplicative review, consultation and permitting. This is primarily because the MOU does not clearly transfer all permitting responsibility to TRPA.

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We continue to support the findings and recommendations in the “Emergency California-Nevada Fire Commission Report”. As stated in Recommendation #26 and the preamble of the draft MOU, the goal of the MOU is to “have an expedited single permitting process...and to achieve consistency in the application of environmental laws...” We do not believe the draft MOU describes a process that meets this recommendation. The working clauses of the MOU appear to create a situation where TRPA does not have any clear authority to set up an expedited single permitting process without constant review and intervention by the Water Board. In general, there does not appear to be any significant change from the current situation.

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In the preamble it states “...the Water Board and TRPA recognize that areas of overlapping authority and regulatory effort exist in the operations of the two agencies, and that it will be mutually beneficial to the Water Board, TRPA, and the regulated community to avoid unnecessary duplicative regulation...” The draft MOU does not indicate any analysis of these overlapping authorities and where specific duplications can be eliminated versus elements that, by law, must remain with each agency. There is no discussion of the points of “unnecessary duplicative regulation.” The MOU should be based on and reference the specific authorities of each agency and focus specifically on “duplicative regulation.”

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The definition of “vegetation management” may be too limiting depending on interpretation. The full range of fuels reduction and forest health activities encompass a much broader spectrum of activities. New technologies not included in the definition may offer innovative solutions. In

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addition, many of our forest health projects include other restoration work integrated into fuels projects. It is unclear how other related restoration work would fit into this definition and the MOU. The definition also opens the door for interpretation of the scope of this MOU in relationship to the projects subject to the Timber Waiver and the existing Forest Service/Water Board MOU. Which document or process takes precedence? This question points again to the need to clearly articulate the legal authorities and scope of the MOU.

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I would like to address some of the individual clauses that we find will allow duplication and inconsistencies to persist:

Clause #3 states “An applicant proposing a vegetation management activity may choose to submit a complete application only to the Water Board and not to TRPA.” This clause defeats the overall goal of a single permitting entity and does not promote the level of consistency that the Fire Commission envisioned. The Fire Commission recommendation is specific in selecting TRPA as the agency responsible for issuing permits.

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Another example of unclear language is Clause #4, which states “the Water Board will not normally issue a permit”. It is not clear under what specific circumstances the Water Board may be the permitting agency, which continues the current duplication and confusion over the permitting process in California.

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Clause #5 has the potential to override TRPA decisions and add mitigations beyond that decision or decisions documented in process compliant with NEPA. The phrase “...or as necessary to ensure protection of water quality...” leaves the permitting process open-ended allowing intervention even after TRPA has made a decision. This leaves applicant agencies in a condition of uncertainty, which does not contribute to the concept of “streamlining”.

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Clause #7 provides a very specific example of continued potential duplication and inconsistency. Clause #7 states “The agency issuing a permit to conduct vegetation management activities will conduct any required pre-harvest and final inspections, and will be responsible for granting a variance to the October 15-May 1 soil disturbance prohibition period, if applicable.” Since under the draft MOU either the Water Board or TRPA could be the issuing agency there is an obvious opportunity for inconsistency in the granting of variances. And in fact this is a perfect example of the potential for duplication. In the fall of 2007 the Forest Service requested variances for several projects to continue past October 15th. Our application was submitted to TRPA and granted. However we did not realize at the time that the Water Board also required a duplicate application. We received notice from the Water Board for not complying with their regulations, requiring duplicate work by my staff to prepare a second application.

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Also, to refer in this clause to fuels reduction and forest health projects as “pre-harvest” is inappropriate. For the most part these projects are not limited simply to “harvest” activities and are much more based on overall ecological restoration.

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Clause #8 further leaves the permitting process open to interpretation for the Forest Service depending on the NEPA documentation, as it states that the Water Board “may use its authority to issue a permit for the project”. This clause also seems to imply that both NEPA documentation and CEQA is required. This would be counter to Fire Commission

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Recommendation #17-F, that proposes only one document should be required. “The Commission recommends for fuel treatment projects with potentially significant environmental impacts, all affected regulatory agencies rely on a single or joint environmental analysis and review process (i.e. EIS/EIR) to reach agreement on project specifications, permit conditions, (if applicable), and monitoring.” We believe that for projects on federal lands that NEPA documentation is all that is necessary and that the CEQA regulations allow state agencies to use NEPA in an effort to reduce duplication. Also there is no mention of where TRPA environmental analysis documents fit into the picture (Compact Section VII).

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Clause #9 creates a duplicative arrangement because it requires redundant review of projects. It appears that most Forest Service projects would fall under one of the six items listed and need dual review by both the Water Board and TRPA. This could lead to delays for applicants and not allow TRPA to respond rapidly, thus defeating the concept of streamlining. This does not seem to be an improvement over the current situation under the existing agreements.

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Clause #11 should not be necessary if “all permitting responsibility” were transferred to TRPA as directed by the Fire Commission. This clause also brings into question the application of the yet to be approved revised Timber Waiver.

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While it has been brought up many times, we believe the model exemplified by the relationship between TRPA and the State of Nevada, Department of Environmental Protection (NDEP) should be followed. For projects in Nevada the Forest Service deals with one entity, TRPA. This is a working example of streamlined permitting with NDEP allowing TRPA to handle the necessary provisions under the appropriate laws.

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In reviewing the MOU as an isolated document it is difficult to evaluate the effectiveness towards streamlining without a concurrent draft of the revised Timber Waiver. The two documents are complimentary and linked in meeting our fuels reduction and forest health objectives and achieving the goals of the Fire Commission.

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It is also difficult to evaluate the implications of this MOU until we see how the implementation of this MOU would affect the existing MOU between the Forest Service and the Water Board. Would this MOU supersede the FS/Water Board MOU?

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In summary the draft MOU maintains a setting of duplicative review, consultation, and permitting that does not appear to provide any streamlining for the Forest Service in planning and implementing fuels reduction and forest health projects. The working clauses of the MOU do not establish clearly that TRPA will have the decision space to issues permits without a burdensome background of review by the Water Board. The draft MOU does not lay out a program that meets the goals of the Fire Commission.

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If you have any further questions please contact Mike LeFevre, Planning Staff Officer at (530) 543-2840. This MOU is critical to the Forest Service accomplishing our fuels reduction and forest health goals in the Lake Tahoe Basin and I look forward to a continuing dialogue with TRPA and the Water Board.

Sincerely,

/s/ Terri Marceron

TERRI MARCERON
Forest Supervisor

cc: John Singlaub, TRPA